IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE A.K.BASHEER

WEDNESDAY, THE 26TH SEPTEMBER 2007 / 4TH ASWINA 1929

OP.No. 17497 of 2000(G)

PETITIONER:

C.O.JACOB, MURIKKAN HOUSE,
PROPOSE P.O.,
ERUMELI KOTTAYAM DISTRICT.

ADDL. P2 IMPLEADED.

MATHEW JACOB, S/O. LATE C.O. JACOB,
MURIKKAN HOUSE, ELIVALIKKARA,
ERUMELI VILLAGE, KANJIRAPPALLY
TALUK, KOTTAYAM DISTRICT.

ADDL.P2 IMPLEADED AS PER ORDER DT. 4.2.02 IN CMP. 6406/02.

BY ADV. SRI.SIBY MATHEW
SRI.WILSON URMESE

RESPONDENTS:
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1. **STATE OF KERALA, REP.BY THE CHIEF SECRETARY,**
   GOVERNMENT SECRETARIAT,
   TRIVANDRUM.

2. **THE CHIEF CONSERVATOR OF FORESTS (PROTECTION),**
   TRIVANDRUM.

BY SPL. GOVERNMENT PLEADER SRI.M.P.PRAKASH

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 21/03/2007, THE COURT ON 26.09.2007 DELIVERED THE FOLLOWING:

OP. NO.17497/2000

ORDER ON CMP. NO.28797/2000 IN OP. NO.17497/2000

DISMISSED

26.09.2007 **SD/- A.K.BASHEER, JUDGE**

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1:- COPY OF THE GOVERNMENT NOTIFICATION DT. 14.2.56.

EXT.P2:- COPY OF THE GOVERNMENT ORDER GO(RT) NO.1204/79/AD DT. 21.4.79.

EXT.P3:- COPY OF THE LETTER NO.A2-775/87 DT. 29./4.92 ISSUED BY THE D.F.O. KOTHAMANGALAM.

EXT.P4:- COPY OF THE ORDER NO.C2 46878/93 DT. 24.5.200 OF THE 2ND RESPONDENT.

EXT.P5:- COPY OF THE DEATH CERTIFICATE DT. 22.1.02 ISSUED BY THE REGISTRAR OF BIRTHS AND DEATHS AND SECRTARY, GRAMA PANCHAYATH, PARATHODE, WITH NO.CL.170/01.

EXT.P6:- COPY OF THE WILL DT. 26.4.2000 EXECUTED BY THE LATER ORIGINAL PETITIONER IN FAVOUR OF THE PETITIONER.

RESPONDENTS EXHIBITS

EXT.R1(a):- COPY OF THE JUDGMENT DT. 6.10.58 IN OP. 299/1958.

EXT.R1(b):- COPY OF THE JUDGMENT DT. 22.10.82 IN OP. 2172/82.

EXT.R1(c):- COPY OF THE JUDGMENT DT. 8.11.85 IN WA. 281/83.

EXT.R19d):- COPY OF THE JUDGMENT DT. 29.9.99 IN OP. 5711/93.

/TRUE COPY/

P.A. TO JUDGE

tss

A.K. Basheer, J.

- -

O.P. No. 17497 of 2000

- -

Dated this the 26th day of September, 2007.

J U D G M E N T

This long drawn litigation had its initiation about 5 decades ago. The issue is still kept alive only because of the unstinted tenacity of the petitioner who had wittingly or unwittingly stepped into the shoes of a contractor, who had successfully bid the right to cut and remove some trees auctioned by the Forest Department way back in the year 1956.

2. The issue that has come up for consideration in this Original Petition is whether the petitioner is legally entitled to seek enforcement of the so called contractual rights obtained by him against the Department at this distance of time.

3. The history of the dispute, shorn off unnecessary details, may be briefly noticed.

4. One Sri.N.K.Varghese had successfully bid in the auction held by the Department in February 1956 to cut and remove 96 teak and rosewood trees in Tract III area in Chennanar beat of Thodupuzha Range in Malayttoor Division. The sale was confirmed in the name of Sri.Varghese in April 1957. It is not in dispute that Sri.Varghese had assigned his right to cut and remove 90 of the 96 trees to the petitioner for a total consideration of Rs.11,000/- as per a registered document dated February 13, 1961.

5. It is on record that prior to the above assignment, Sri.Varghese had filed O.P.No.299/1958 before this Court under Article 226 of the Constitution apparently seeking for a direction to the Department to allow him to cut and remove the trees purchased by him in the auction sale. The Original Petition was disposed of by this Court on October 6, 1958 in the following terms:

> "In view of the following statement in paragraph 8 of the affidavit of the 2nd respondent dated 26/8/1958:
>
> > "The department is also willing to release such of the trees bid by the petitioner as are at present standing on Government lands after appropriating from the amount paid by the petitioner their value and to pay back the balance to the petitioner".
>
> --which the learned Government Pleader assures me will be implemented without delay--this petition is not pressed and is hereby dismissed . No costs."

A copy of the judgment is on record as Ext.R1(a).

6. It is admitted by the petitioner that after the assignment in his

favour, he had been allowed to cut and remove 19 out of the 90 trees referred to above. But according to him, the Department refused to take any steps to enable him to cut and remove the remaining trees. In 1975, 19 more trees were identified. But for one reason or the other the Department refused permission. Ultimately by communication dated April 21, 1979 petitioner was informed by the Government that the 19 trees identified in the year 1975 would be released to him "after another identification by the authorities of Forest and Revenue Departments and the petitioner together, if required". There was a further stipulation in the said order that "the quantity of the trees should not exceed the total quantity of the timber as per the original measurements". A copy of the said order is on record as Ext.P2.

7. Petitioner had challenged the above order (Ext.P2) before this Court in O.P.No.2172/81. He had also prayed for a further direction to release the entire trees involved in the auction sale. The Original Petition was disposed of by this Court on October 22, 1982 with the following directions:

> "In the result, the original petition is disposed of in the following manner:
>
> 1) Directing the respondents to release the 19 trees mentioned in Ext.P1 to the petitioner as expeditiously as possible without any restriction regarding the quantity of timber.
>
> 2) Directing the 1st respondent to consider the claim

of the petitioner for release of the remaining 52 trees after giving an opportunity to the petitioner to submit a representation and issue appropriate orders."

8. The above judgment was challenged by the Government and the Department before the Division Bench in WA.No.281/82. When the above appeal came up for consideration, petitioner (respondent in the Writ Appeal) sought permission to withdraw the Original Petition with liberty "to avail such remedy as are open in accordance with law". Accordingly permission was granted and the judgment of the learned Single Judge was set aside. Ext.R1(c) is the true photocopy of the above judgment.

9. It is the case of the petitioner that thereafter he kept on sending representations to the authorities including the Minister in charge of the Department. Ultimately the Divisional Forest Officer, Kothamangalam issued an order dated April 29, 1992 informing the petitioner that the Government has ordered to release 1.548 cubic meters of rosewood if he gives an undertaking in writing that he would not make any further claim in the matter. A true photocopy of the said communication is on record as Ext.P3.

10. It is admitted by the petitioner that in response to Ext.P3 he had submitted a representation before the Minister for Forests. Nevertheless, petitioner preferred O.P.NO.5711/92 before this Court challenging the order referred to above (Ext.P3) as well as the order

dated April 21, 1979 (Ext.P2 herein). The prayer was to issue a writ of mandamus or such other direction to the Minister concerned to take a decision on his representation. The above Original Petition was disposed of by this Court as could be seen from Ext.R1(d) judgment dated September 29, 1999 with a direction to Chief Conservator of Forests, Thiruvananthapuram to take a decision on the representation submitted by the petitioner. It is also pertinent to note that this Court had quashed the two orders mentioned above (Ext.P2 and P3) while disposing of the above Original Petition.

11. Pursuant to the direction issued by this Court in Ext.R1(d) judgment, the Chief Conservator passed an order on May 24, 2000 reiterating the earlier decision that petitioner would be entitled to get only 1.548 cubic meters of rosewood. A copy of the order is on record as Ext.P4. The primary prayer in this Original Petition is to quash the above order. The other prayer is to issue a declaration that the petitioner is entitled to collect the timber from the balance 71 trees without any restriction regarding quantity.

12. In the counter affidavit it is admitted by the respondents that Sri.N.K. Varghese had successfully bid in the auction in the year 1956 in respect of 96 trees which stood in various survey numbers both in private lands and Government lands in Tract III area of Thodupuzha range. At the time of auction, the Government had got monopoly right over the trees standing in private as well as Government lands. But shortly after confirmation of sale in favour of Sri.Varghese the

monopoly right of the Government over the royal trees standing in private lands was taken away by the Travancore Forests (Amendment) Act 1958 (Act 3 of 1958) which came into force on January 8, 1958. By virtue of this legislation, the right and ownership of the royal trees standing in private lands stood vested in the land owners. In other words, the Government lost ownership of the trees standing in private lands. Therefore the Chief Conservator of Forests was directed to cancel the sale in respect of all those trees in private lands and to refund the amount paid by the bidders in various auctions. It was in terms of the above decision that the Government had undertaken before this Court in OP.299/58 (Ext.R1(a) that Sri..Varghese would be allowed to remove such of the trees standing on Government lands after appropriating the value thereof from the amount paid by him. It was further agreed that the balance amount would be paid back to Sri.Varghese.

13. It is further contended by the respondents that the petitioner had purchased the right over 90 trees from Sri.Varghese at his own risk without apparently verifying the nature of the right obtained by Sri.Varghese. It is the further case of the respondents that out of the 90 trees which were purchased by the petitioner from Sri.Varghese 19 rosewood trees were marked during 1961 and 19 more rosewood trees were marked in 1972. The quantity of timber in these 38 rosewood trees was assessed at 52.173 cubic meters. Petitioner had in fact cut and removed 19 trees (50.625 cubic meters) of timber and 15 metric tonne

firewood pursuant to an agreement executed by him with the Divisional Forest Officer, Malayattoor. As regards the balance 19 trees which were identified subsequently, the contention of the respondents is that the Government had ordered release of those trees subject to the quantity wise restriction, since petitioner was entitled to get a total quantity of 52.173 square meters from the 38 rosewood trees standing in Government forest which were identified in 1961 and 1972. Since the petitioner had removed 50.625 square meters of timber, he was entitled to get the balance of only 1. 548 square meters (52.173 - 50.625 sq.mts. = 1.548 sq.mts.). In Ext.P4 which is impugned in this Original Petition, the Chief Conservator had adverted to all the above aspects and had ordered release of the above quantity of timber (1.548 cubic meters) which was worth more than Rs.3 lakhs in the year 2000. In short, the contention of the respondents is that the petitioner is not entitled to get anything more than what has been offered to him in Ext.P4.

14. In view of the nature of the contentions raised by the petitioner and the Department, the learned Special Government Pleader was directed to produce the entire file relating to the case. I have gone through file carefully. Similarly I have also perused the judges papers relating to O.P.No.5711/93 which culminated in Ext.R1 (d) judgment.

15. It is admitted by the petitioner that he had got assignment of the right to cut and remove 90 trees from the auction purchaser,

Sri.N.K.Varghese in the year 1961. As mentioned earlier, Act 3 of 1958 had come into force in the meanwhile, with effect from January 8, 1958, by which the Government was denuded of the right of ownership over the royal trees standing in private lands. Indisputably the 96 trees which were auctioned to Sri.Varghese lay scattered in private lands as well as Government lands. As rightly pointed out by the respondents, in 1961, at the time of assignment in his favour, petitioner had not apparently bothered to verify as to how many trees were actually available in the Government lands which the auction purchaser could cut and remove.

16. In Annexure R1(a) judgment this Court had recorded the submission made on behalf of the Department that it was prepared to release the trees lying in Government lands to the auction purchaser. Therefore there is considerable force in the contention raised by the respondents that the auction purchaser or his assignee could lay claim only over the trees which were standing in Government lands. It is the specific case of the respondents that after Ext.R1(a) judgment, 19 trees were identified in the year 1961 and petitioner was allowed to cut and remove those trees, the quantify of which was admittedly found to be 50.625 sq.m and 50 metric tonne firewood. Thereafter 19 more rosewood trees standing in the Government lands were identified in the year 1972. Since then several attempts were again made by the officials (as could be seen from the files) to identify the trees involved in the auction sale. Though 19 more trees were identified in 1972,

some of the private land owners raised dispute over those trees and thus the matter was further delayed.

17. As rightly pointed out by the respondents, the trees which were auctioned to Sri.Varghese were in fact marked way back in the year 1952. The auction was held in the year 1956. The sale was confirmed in 1957. Therefore inevitably in the year 1972 the Officials might have found it difficult to identify the trees which were marked more than 20 years ago. Anyhow, the fact remains that after the introduction of Act III/1958 the Government had lost ownership over the royal trees standing in private lands. It was keeping in view all the above aspects and particularly the delay in identifying the trees that the government had issued Ext.P2 order on April 21, 1979 restricting the quantity of timber that could be released to the petitioner in respect of the 38 rosewood trees which were identified in 1961 and 1972.

18. Petitioner does not have a case that the above quantify was not arrived at after identifying those 38 rosewood trees. It is also admitted by the petitioner that he had entered into an agreement with the Department in the year 1963 pursuant to which he had cut and removed 19 rosewood trees specifying the quantity. As mentioned earlier, petitioner has not denied the contention raised by the Department that in the year 1961 he had removed the total quantity of 50625 sq.mtrs. of timber and 50 metric tonnes of firewood. Significantly petitioner has not bothered to produce the assignment deed executed by Sri.Varghese in his favour nor has he produced the

agreement executed between him and the Department.

19. I have referred to above aspects only to highlight the fact that the entire materials available before this Court undoubtedly reveal that petitioner is guilty of suppression of some material facts to which I will refer a little later.

20. As mentioned earlier petitioner had challenged Ext.P2 order dated April 21, 1979 in OP.2172/82 contending inter alia that the Government and the Department were not justified in imposing a quantity wise restriction in respect of the 90 trees which he was entitled to cut and remove. Though the above contention was accepted by the learned single Judge in Ext.R1(b) judgment, the Division Bench had set aside the said judgment in WA.281/2003 (Ext.R1(c)., however reserving the right of the petitioner to avail all such remedies as are open to him in accordance with law.

21. The Division Bench had rendered the judgment on November 8, 1985. According to the petitioner after disposal of the the writ appeal, petitioner had submitted several representations before the departmental officers and the Minister. According to him, after about 7 years he received a communication dated April 29, 1992 informing him that he would be entitled to get 1.548 cubic metrs. of rosewood which constrained him to file OP.5711/93.

22. In this context it is pertinent to note that petitioner had not only challenged the above communication from the Divisional Forest Officer but also the order of the Government dated April 21, 1979 in

OP.5711/93. As noticed already, the above order of the Government dated April 21, 1979 was challenged by the petitioner earlier in OP.2172/82. Though he had initially succeeded before the learned single Judge, the Division Bench had set aside the said judgment. Thus finality had attained as far as the challenge to the said order is concerned. Petitioner could not have challenged the same order yet again in OP.5711/93.

23. A perusal of the Judge's papers in OP.5711/93 reveals that petitioner had not produced the judgment of the Division Bench in that proceeding. He had further suppressed the fact that the judgment of the learned single Judge in OP.2172/82 had been set aside by a Division Bench relegating the petitioner to seek the other remedies available to him in accordance with law. It is true that this Court in OP.5711/93 (Ext.R1(d) had quashed the order of the Government dated April 21, 1979 and that of the D.F.O dated April 29, 1992 (Exts.P1 and P3 respectively in this O.P) . It is also true that the above judgment had become final since the Department had not challenged the same but a perusal of the Judge's papers in the above proceeding shows that petitioner was not only guilty of suppression but he was also guilty of laches.

24. More importantly, the right which is now to be established by the petitioner is undoubtedly one falling in the realm of enforcement of a contract. The specific case of the petitioner is that the Government /Department is bound to permit him to cut and remove

the remaining 71 trees which were sold to Sri.Varghese in the auction sale held in the year 1956. But it is pertinent to note that on introduction of Act 3 of 1958 the Government had been denuded of the right over the royal trees standing in the private lands. Consequently Sri.Varghese could not have enforced the contract though the sale was confirmed in his favour prior to the enactment. Obviously this aspect of the matter was considered by the Division Bench and it was therefore that the petitioner was permitted to withdraw the Original Petition filed by him. The Division Bench had set aside the judgment of the learned single Judge and allowed the petitioner to pursue the other remedies available to him in accordance with law. But the petitioner had approached this Court after about 8 years with a seemingly innocuous prayer to issue a direction to the Department to consider his representation. Significantly he had also challenged the same order which had culminated in the earlier proceedings before the Division Bench in WA.1983.

25. Having regard to the entire facts and circumstances I am satisfied that the petitioner is not entitled to get any relief in this original petition. There is no merit in any of the contentions raised by the petitioner. The Government/Department in my view had shown sufficient indulgence to the petitioner in the facts and circumstances of the case. Petitioner had refused to accept the above offer.

26. In **National Highway Authority of India** v. **M/s.Ganga Enterprises and anr. (AIR 2003 SC 3823)** their Lordships of the

Supreme Court had occasion to consider the law relating to the jurisdiction of the High Court under Article 226 in contractual disputes and also over issues relating to terms of offer in a contract between the parties. Their Lordships while referring to the earlier decisions held that disputes relating to contracts cannot be agitated under Article 226 of the Constitution of India. It was noticed by the Apex Court that the dispute in that case was regarding the terms of offer and therefore they fell in the realm of contractual disputes in respect of which a writ court was not the proper forum.

27. Having perused the entire materials on record, I am of the view that the petitioner had missed the bus a long time ago.

The Writ Petition fails and it is accordingly dismissed.

A.K. Basheer

Judge.

an.

A.K. Basheer, Judge.

O.P.No.17497 of 2000

Judgments

26/09/2007